

CENTER FOR DISABILITY ACCESS
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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

Nehemiah Kong,

Plaintiff,

v.

Barchester Temple City, L.P., a
California Limited Partnership;
Bar-CA Independent I, Inc., a
California Corporation;
Garfield Beach CVS, L.L.C., a
California Limited Liability
Company; and Does 1-10,

Defendants.

Case No.

**Complaint For Damages And
Injunctive Relief For** Violations
Of: American's With Disabilities
Act; Unruh Civil Rights Act

Plaintiff Nehemiah Kong complains of Defendants Barchester Temple City, L.P., a California Limited Partnership; Bar-CA Independent I, Inc., a California Corporation; Garfield Beach CVS, L.L.C., a California Limited Liability Company; and Does 1-10 ("Defendants") and alleges as follows:

PARTIES:

1. Plaintiff is a California resident with physical disabilities. He is a paraplegic who suffers from Polio. He uses a wheelchair for mobility. He has a

1 specially equipped van with a ramp that deploys out of the passenger side of
2 his van.

3 2. Defendants Barchester Temple City, L.P. and Bar-CA Independent I,
4 Inc. owned the real property located at or about 5585 N. Rosemead Blvd.,
5 Temple City, California, in July 2018.

6 3. Defendants Barchester Temple City, L.P. and Bar-CA Independent I,
7 Inc. own the real property located at or about 5585 N. Rosemead Blvd.,
8 Temple City, California, currently.

9 4. Defendants Barchester Temple City, L.P. and Bar-CA Independent I,
10 Inc. owned the real property located at or about 5607 N. Rosemead Blvd.,
11 Temple City, California, in July 2018.

12 5. Defendants Barchester Temple City, L.P. and Bar-CA Independent I,
13 Inc. own the real property located at or about 5607 N. Rosemead Blvd.,
14 Temple City, California, currently.

15 6. Defendant Garfield Beach CVS, L.L.C. owned the CVS store located at
16 or about 5585 N. Rosemead Blvd., Temple City, California, in July 2018.

17 7. Defendant Garfield Beach CVS, L.L.C. owns the CVS store located at or
18 about 5585 N. Rosemead Blvd., Temple City, California, currently.

19 8. Plaintiff does not know the true names of Defendants, their business
20 capacities, their ownership connection to the property and business, or their
21 relative responsibilities in causing the access violations herein complained of,
22 and alleges a joint venture and common enterprise by all such Defendants.
23 Plaintiff is informed and believes that each of the Defendants herein,
24 including Does 1 through 10, inclusive, is responsible in some capacity for the
25 events herein alleged, or is a necessary party for obtaining appropriate relief.
26 Plaintiff will seek leave to amend when the true names, capacities,
27 connections, and responsibilities of the Defendants and Does 1 through 10,
28 inclusive, are ascertained.

JURISDICTION & VENUE:

9. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. § 1331 and § 1343(a)(3) & (a)(4) for violations of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12101, et seq.

10. Pursuant to supplemental jurisdiction, an attendant and related cause of action, arising from the same nucleus of operative facts and arising out of the same transactions, is also brought under California's Unruh Civil Rights Act, which act expressly incorporates the Americans with Disabilities Act.

11. Venue is proper in this court pursuant to 28 U.S.C. § 1391(b) and is founded on the fact that the real property which is the subject of this action is located in this district and that Plaintiff's cause of action arose in this district.

FACTUAL ALLEGATIONS:

12. Plaintiff went to the shopping center ("Shopping Center") in July 2018 to shop at CVS and bank at East West Bank.

13. The Shopping Center is a facility open to the public, a place of public accommodation, and a business establishment.

14. Parking spaces are one of the facilities, privileges, and advantages offered by Defendants to patrons of the Shopping Center.

15. Unfortunately, even though there were two parking spaces marked and reserved for persons with disabilities directly in front of CVS during Plaintiff's visit, the parking stalls and access aisle reserved for persons with disabilities were not level with each other.

16. In fact, the parking spaces marked and reserved for persons with disabilities in front of CVS had slopes greater than 2.1%.

17. Currently, the parking stalls and access aisle in front of CVS are not level with each other and there are inaccessible slopes in both the access aisle and parking stalls.

1 18. Additionally, because of the configuration and location of the parking
2 spaces for persons with disabilities in front of the Icho Izakaya store, customers
3 using most of those parking are required to travel behind parked cars and travel
4 in the vehicular drive path to reach the nearest, accessible path of travel back
5 to CVS. This is dangerous for wheelchair users.

6 19. Meanwhile, the parking space marked and reserved for persons with
7 disabilities directly in front of the East West Bank also has a curb ramp running
8 into the parking stall and access aisle.

9 20. The curb ramp creates slopes that are greater than 2.1%.

10 21. Defendants have failed to maintain in operable working condition those
11 features of facilities and equipment that are required to be readily accessible to
12 and usable by persons with disabilities at the Subject Property.

13 22. Plaintiff personally encountered these barriers.

14 23. This inaccessible parking lot denied the plaintiff full and equal access
15 and caused him difficulty, discomfort, and embarrassment.

16 24. Restrooms are another one of the facilities, privileges, and advantages
17 offered by Defendants to patrons of CVS.

18 25. Meanwhile, even though plaintiff did not personally confront the
19 barrier, the plumbing underneath the sink is not wrapped to protect against
20 burning contact.

21 26. Plaintiff plans to return and patronize CVS but will be deterred from
22 visiting until the defendants remove the barriers.

23 27. The defendants have failed to maintain in working and useable
24 conditions those features required to provide ready access to persons with
25 disabilities.

26 28. The barriers identified above are easily removed without much
27 difficulty or expense. They are the types of barriers identified by the
28 Department of Justice as presumably readily achievable to remove and, in fact,

1 these barriers are readily achievable to remove. Moreover, there are numerous
2 alternative accommodations that could be made to provide a greater level of
3 access if complete removal were not achievable.

4 29. For example, there are numerous paint/stripe companies that will come
5 and stripe level parking stalls and access aisles and install proper signage on
6 rapid notice, with very modest expense, sometimes as low as \$300 in full
7 compliance with federal and state access standards.

8 30. Wrap can be installed under the sink at a cost of no more than \$25.

9 31. Plaintiff is deterred from returning and patronizing the Shopping
10 Center because of his knowledge of the barriers that exist. Plaintiff will,
11 nonetheless, return to assess ongoing compliance with the ADA and will
12 return to patronize Shopping Center as a customer once the barriers are
13 removed.

14 32. Given obvious and blatant nature of the barriers and violations alleged
15 herein, the plaintiff alleges, on information and belief, that there are other
16 violations and barriers on the site that relate to his disability. Plaintiff will
17 amend the Complaint to provide proper notice regarding the scope of this
18 lawsuit once he conducts a site inspection. However, please be on notice that
19 the plaintiff seeks to have all barriers related to his disability remedied. See
20 *Doran v. 7-11*, 524 F.3d 1034 (9th Cir. 2008) (holding that once a plaintiff
21 encounters one barrier at a site, he can sue to have all barriers that relate to his
22 disability removed regardless of whether he personally encountered them).

23
24 **I. FIRST CAUSE OF ACTION: VIOLATION OF THE AMERICANS**
25 **WITH DISABILITIES ACT OF 1990** (On behalf of plaintiff and against all
26 defendants (42 U.S.C. section 12101, et seq.)

27 33. Plaintiff repleads and incorporates by reference, as if fully set forth
28 again herein, the allegations contained in all prior paragraphs of this

1 complaint.

2 34. Under the ADA, it is an act of discrimination to fail to ensure that the
3 privileges, advantages, accommodations, facilities, goods and services of any
4 place of public accommodation is offered on a full and equal basis by anyone
5 who owns, leases, or operates a place of public accommodation. See 42 U.S.C.
6 § 12182(a). Discrimination is defined, inter alia, as follows:

- 7 a. A failure to make reasonable modifications in policies, practices,
8 or procedures, when such modifications are necessary to afford
9 goods, services, facilities, privileges, advantages, or
10 accommodations to individuals with disabilities, unless the
11 accommodation would work a fundamental alteration of those
12 services and facilities. 42 U.S.C. § 12182(b)(2)(A)(ii).
- 13 b. A failure to remove architectural barriers where such removal is
14 readily achievable. 42 U.S.C. § 12182(b)(2)(A)(iv). Barriers are
15 defined by reference to the ADAAG, found at 28 C.F.R., Part 36,
16 Appendix "D."
- 17 c. A failure to make alterations in such a manner that, to the
18 maximum extent feasible, the altered portions of the facility are
19 readily accessible to and usable by individuals with disabilities,
20 including individuals who use wheelchairs or to ensure that, to the
21 maximum extent feasible, the path of travel to the altered area and
22 the bathrooms, telephones, and drinking fountains serving the
23 altered area, are readily accessible to and usable by individuals
24 with disabilities. 42 U.S.C. § 12183(a)(2).

25 35. Under the 1991 Standards, parking spaces and access aisles must be
26 level with surface slopes not exceeding 1:50 (2%) in all directions. 1991
27 Standards § 4.6.3. Under the 2010 Standards, access aisles shall be at the
28 same level as the parking spaces they serve. Changes in level are not permitted.

1 2010 Standards 502.4. "Access aisles are required to be nearly level in all
2 directions to provide a surface for wheelchair transfer to and from vehicles."

3 2010 Standards § 502.4 Advisory. No more than a 1:48 slope is permitted.
4 2010 Standards § 502.4.

5 36. Here the failure to provide level parking in the parking lot of the
6 Shopping Center is a violation of the law.

7 37. Under the ADA, there must be at least one accessible route connecting
8 every building on the same site. 1991 Standards § 4.3.2(2); 2010 Standards §
9 206.2.2. Travel in the vehicular drive path with vehicles is not part of an
10 accessible route.

11 38. According to the California Building Code, it is not permissible to locate
12 handicap-accessible parking stalls in locations where a person with disability
13 is compelled to wheel or walk behind parked cars other than their own. CBC
14 1129B.3.3.

15 39. Here, the failure to provide an accessible route is a violation of the law.

16 40. Hot water and drain pipes under lavatories must be insulated or
17 otherwise configured to protect against contact. 1991 Standards § 4.19.4;
18 2010 Standards § 606.5.

19 41. Here, the failure to wrap the plumbing underneath the sink in the
20 restroom of CVS is a violation of the ADA.

21 42. A public accommodation must maintain in operable working condition
22 those features of its facilities and equipment that are required to be readily
23 accessible to and usable by persons with disabilities. 28 C.F.R. § 36.211(a).

24 43. Here, the failure to ensure that the accessible facilities were available
25 and ready to be used by the plaintiff is a violation of the law.

26 44. Given its location and options, plaintiff will continue to desire to
27 patronize the Shopping Center but he has been and will continue to be
28 discriminated against due to the lack of accessible facilities and, therefore,

1 seeks injunctive relief to remove the barriers.

2
3 **II. SECOND CAUSE OF ACTION: VIOLATION OF THE UNRUH CIVIL**
4 **RIGHTS ACT** (On behalf of plaintiff and against all defendants) (Cal Civ §
5 51-53)

6 45. Plaintiff repleads and incorporates by reference, as if fully set forth
7 again herein, the allegations contained in all prior paragraphs of this
8 complaint. The Unruh Civil Rights Act (“Unruh Act”) guarantees, inter alia,
9 that persons with disabilities are entitled to full and equal accommodations,
10 advantages, facilities, privileges, or services in all business establishment of
11 every kind whatsoever within the jurisdiction of the State of California. Cal.
12 Civ. Code §51(b).

13 46. The Unruh Act provides that a violation of the ADA is a violation of the
14 Unruh Act. Cal. Civ. Code, § 51(f).

15 47. Defendants’ acts and omissions, as herein alleged, have violated the
16 Unruh Act by, inter alia, denying, or aiding, or inciting the denial of, Plaintiff’s
17 rights to full and equal use of the accommodations, advantages, facilities,
18 privileges, or services offered.

19 48. Because the violation of the Unruh Civil Rights Act resulted in difficulty,
20 discomfort or embarrassment for the plaintiff, the defendants are also each
21 responsible for statutory damages, i.e., a civil penalty. (Civ. Code § 55.56(a)-
22 (c).)

23
24 **PRAYER:**

25 Wherefore, Plaintiff prays that this Court award damages and provide
26 relief as follows:

27 1. For injunctive relief, compelling Defendants to comply with the
28 Americans with Disabilities Act and the Unruh Civil Rights Act. Note: the

1 plaintiff is not invoking section 55 of the California Civil Code and is not
2 seeking injunctive relief under the Disabled Persons Act at all.

3 2. Damages under the Unruh Civil Rights Act, which provides for actual
4 damages and a statutory minimum of \$4,000.

5 3. Reasonable attorney fees, litigation expenses and costs of suit, pursuant
6 to 42 U.S.C. § 12205; and Cal. Civ. Code §§ 52.

7
8 Dated: July 19, 2018

CENTER FOR DISABILITY ACCESS

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11 By:



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13 _____
Chris Carson, Esq.
Attorney for plaintiff